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THE PRUDENTIAL INSURANCE
COMPANY OF AMERICA, INC.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

DOMINIQUE OSBORNE, on her own
behalf and on behalf of a class of
similarly situated persons pursuant to
F.R.C.P. 23 and 23 U.S.C. §216, and on
behalf of the General Public,

Plaintiffs,

v.

THE PRUDENTIAL INSURANCE
COMPANY OF AMERICA, a New
Jersey Corporation,

Defendant.

Case No. CV10-2465 JFW (CWx)

The Hon. John F. Walter

**DECLARATION OF CHARLENE
FRANKE IN SUPPORT OF
DEFENDANT PRUDENTIAL
INSURANCE COMPANY OF
AMERICA, INC.'S
MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT OF ITS MOTION FOR
SUMMARY JUDGMENT**

Date: December 6, 2010
Time: 1:30 p.m.
Courtroom: 16

Complaint Filed: April 5, 2010
Discovery Cutoff: March 1, 2011
Motion Cutoff: March 28, 2011
Pre-Trial Conf.: May 6, 2011
Trial Date: May 24, 2011

DECLARATION OF CHARLENE FRANKE

I, Charlene Franke, declare as follows:

1. The following facts are based on my own personal knowledge and, if called as a witness, I could competently testify to them.

2. I am a Manager, Human Resources, for The Prudential Insurance Company of America, Inc., and I am the designated human resources manager for several of the company's largest call centers.

3. As a part of my job duties, I am familiar with Prudential HR Policies, which include policies on recording the time you work and with Prudential's overtime policy. The policy states that "[a]ll employees in positions that are classified as nonexempt must be paid overtime in accordance with applicable federal, state and local laws." The policy also states that "[e]mployees must complete and submit overtime documents within the required time frame." Moreover, for time that does not qualify as FLSA overtime beyond 40 hours in a workweek the policy states that "employees whose standard workweek is 37.5 hours receive their 'straight' time for additional hours worked beyond 37.5 hours." This policy has been in effect since prior to March 2007 and currently remains in effect. Attached as Exhibit "A" is a true and correct copy of Prudential's policies with regard to payment for hours worked.


4. Since prior to March 2007, Prudential has maintained an Intranet system that includes human resources policies. The policies regarding payment for hours worked are directly accessible using the company's Intranet system. The company's Intranet system can be accessed by all non-exempt call center employees in the United States using the computer at their workstation.

5. Prudential utilizes an exception log system in which the default pay set for an employee is based on his or her scheduled shift. When employees work less or more than their scheduled shift, it is their responsibility to access Prudential's electronic Intranet to input any deviations from their scheduled shifts.

1 more than their scheduled shift, it is their responsibility to access Prudential's
2 electronic Intranet to input any additional hours beyond their scheduled shifts.
3 This system allows employees to report deviations in increments up to one minute.
4 All Prudential employees have access to the electronic Intranet to input and
5 accurately record their time.

6 I declare under penalty of perjury under the laws of the United States of
7 America that the foregoing is true and correct.

8 Executed on this 27th day of July 2010 at Dubuque, Iowa.

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11 Charlene Franke
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DECLARATION OF CHARLENE FRANKE

EXHIBIT A



Prudential HR Policies Archived Policy

Archived 10/15/2009 03:17 PM by Pat Baker

Section Title: SECTION I
Main Topic: Working at Prudential
Sub Topic: Overtime
Published on 1/22/2008

The purpose of this database is to provide general guidance on Prudential Human Resources policies. The policies, procedures and practices set forth in this database supersede and replace all previous policies, procedures and practices. None of the company's policies, procedures, or practices, whether expressed here or elsewhere, are intended to constitute or create a contract of employment nor shall any such policy, procedure, or practice constitute or create the right to remain associated with or in the employ of Prudential for any particular period of time. Employment with Prudential is employment-at-will. This means that either you or the Company may terminate the employment relationship at any time, with or without cause or notice.

The Company may modify, amend, suspend, or terminate any and all of the policies, procedures and practices in this database in its sole discretion, at any time, without prior notice or consent of any employee, to the extent permitted under applicable law. Any violation of company policies, procedures or practices could result in disciplinary action, up to and including, suspension without pay and termination.

Subject: Overtime		
Section: Working at Prudential	Issue Date:	March 4, 2004
Issuing Department: Human Resources	Contact:	Corporate Centers HR Karen Bruno / Wendy Levy

Purpose: To comply with federal and state wage and hour laws.

Policy: All employees in positions that are classified as nonexempt must be paid overtime in accordance with applicable federal, state and local laws. Prior to working overtime, all nonexempt employees must receive proper prior authorization from management. Employees must complete and submit overtime documents within the required time

frame.

Additional Information:

General Overtime Provisions

- a. Employees are expected to work overtime when asked.
- b. The Fair Labor Standards Act ("FLSA") requires that most nonexempt employees be paid overtime pay at the rate of one and one-half times their regular hourly rate of pay for hours worked in excess of 40 during any workweek.
- c. The regular pay rate applies for all hours worked up to and including 40 hours in a workweek. This means that employees whose standard workweek is 37.5 hours receive their "straight" time for additional hours worked beyond 37.5 hours up to and including 40 hours.
- d. Employees classified as exempt are not eligible for overtime compensation.
- e. There are also state laws governing the payment of overtime and they may be more generous than the FLSA. Click [here](#) for information on states that have different requirements for the payment of overtime (□)
- f. In general, minors (under age 18) may not work for more than 40 hours per week or more than eight hours per day. Some state and local wage and hour laws may be more restrictive. The local law department should be consulted to ensure compliance.

Compensatory Time Off Alternative to Overtime

Nonexempt employees may be given compensatory (alternative) time off in lieu of payment for overtime provided that all of the following requirements are met:

- a. The compensatory time off must be at the overtime rate for all hours over 40 (i.e., 1.5 hours off per each overtime hour worked);
- b. The compensatory time off must be used within the pay period in which the overtime was worked;
- c. No state or local law does preclude compensatory time off in lieu of overtime pay; and
- d. The employee voluntarily chooses to take the overtime as compensatory time.

In addition, weekly hours may be modified to any schedule that results in the total hours worked remaining under 40, provided there is no applicable state or local law which would require the payment of overtime in this situation. This may be done either as part of a supervisor-approved business-based flexibility arrangement that has been initiated by the employee, or as a scheduling change requested by the supervisor. For example, an employee who normally works 7.5 hours each weekday could work an extra hour on Monday and leave an hour earlier on Friday. The employee's total hours would still be under 40 and there would be no overtime liability.

Prudential HR Policy

Reference:

- Appendix -State Overtime Laws□
- Business Based Flexibility Flexible Work Arrangements
- "My Prudential" Page Overtime/Part-Time Information

Geographic Scope:

U.S. Only

General Accountabilities - Section

Management is responsible for:

- understanding and complying with all aspects of the policy manual;
- ensuring that employees in the areas they manage comply with all policies in this manual;
- taking appropriate action when policies are violated, including consulting with Human Resources;
- consulting with their HR Consultant on questions of HR Policy; and
- following any standard company procedures for managers that are associated with the policies contained in the manual.

Human Resources is responsible for:

- developing, issuing and maintaining company wide Human Resources policies;
- advising management on the implementation of Human Resources policies including any supplemental Human Resources policies, procedures or guidelines established at the business division level;
- advising management on policy application to individual employee relations situations; and
- following any standard company procedures for Human Resources that are associated with the policies contained in the manual.

Employees are responsible for:

- understanding and complying with all aspects of the policy manual;
- consulting with their Manager on any questions or clarifications needed regarding HR Policy; and
- following any standard company procedures for employees that are associated with the policies contained in the manual.

Author: Nancy Heir
Updated by: Wendy Levy

Date of Issue: 03/01/2004
Date Updated: 01/22/2008

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